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November 23, 2010

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Final Interim Rule – ARM and Fixed-Rate Mortgage Revisions to Reg Z under MDIA
Docket No. R-1366

Dear Ms. Johnson:

This letter is submitted in response to the Interim Final Rule revising Reg Z to implement the provisions of the Mortgage Disclosure Improvement Act that becomes effective on January 30, 2011.

Securian Financial Group is a leading provider of lending and deposit forms in the credit union industry. As such, we provide closed-end and open-end consumer and home equity loan forms, credit card forms, and deposit forms to hundreds of credit unions nationwide. It is with this background and knowledge that this letter is submitted. We appreciate the opportunity to provide this information.

We provide comments with regard to the following:

1. We seek postponement of the mandatory compliance date for fixed-rate, fixed-payment mortgages.
2. We seek clarification of the rules generally, and modification of the Model Forms specifically. The organization of the rules themselves make it extremely difficult to decipher the exact requirements for various loan types. If we are reading the rule correctly, we do not believe the Model Forms are complete and are therefore inaccurate.

3. We seek clarification regarding the treatment of fixed-rate mortgages that have discounted preferred rates based on the consumer satisfying a certain condition, e.g., the consumer makes payments electronically or the borrower is an employee of the credit union.
4. We ask that fixed-rate mortgages in which payments do not change and that have no escrow (e.g., second mortgages) be exempt from the rule.
5. We seek clarification regarding Model Form H-4(H).
6. We ask that the requirements of new 226.18(s) be in addition to, rather than instead of, the payment schedule requirements of 226.18(g) for fixed-rate mortgages or, alternatively that the 226.18(g) disclosures be allowed in the Fed Box as “directly related” information.
7. We seek clarification on other, various questions regarding the Final Interim Rule as outlined below.

| |
|------------------------------|
| IMPLEMENTATION PERIOD |
|------------------------------|

The Mortgage Disclosure Improvement Act of 2008 mandates a compliance date of January 30, 2011. The MDIA applies only to adjustable rate mortgages and fixed-rate mortgages in which the payments can change. The Board, however, under this Final Interim Rule, also mandates this compliance date for fixed-rate mortgages in which payments do not change (e.g., fully-amortizing fixed-rate loans). We ask the Board to postpone the mandatory compliance date for fixed-rate, fully amortizing mortgages for the following reasons.

First, the MDIA does not mandate a compliance date for fixed-rate, fully amortizing mortgages. It only mandates a compliance date for ARMs and fixed-rate mortgages under which loan payments may change. Section 2502(c)(2) of the MDIA states:

(2) VARIABLE INTEREST RATES. - Subparagraph (C) of section 128(b)(2) of the Truth in Lending Act (15 USC 1638(b)(2)(C)), as added by subsection (a) of this section, shall become effective on the earlier of –

- (A) the compliance date established by the Board for such purpose, by regulation; or
- (B) 30 months after the date of enactment of this Act.

As the Board knows, this mandates a compliance date of January 30, 2011. Subparagraph (C) pertains only to “an extension of credit that is secured by the dwelling of a consumer, under which the annual rate of interest is variable, or with respect to which the regular payments may otherwise be variable”. This language does not apply to loan products such as fixed-rate mortgages with payments that will not change (e.g., fully amortizing loans that make payments in substantially equal installments). This would include the vast majority of “second mortgages” in the marketplace today. The January 30, 2011 compliance date does not apply to such mortgages, and we respectfully request the Board to postpone the mandatory compliance date for such loans (or to exempt these loans from the Final Rule altogether, as discussed elsewhere in this letter).

Second, January 30, 2011 is an unrealistic compliance date and will cause many financial institutions to be out of compliance with the Board’s new rule. This Final Interim Rule was issued on August 16, 2010. This is less than five-and-a-half months prior to the compliance date. Mortgage lenders cannot revise their loan documentation for every type of mortgage loan they have in such a short time frame.

Lenders need time to analyze the Rule, have their loan form providers draft revised documents, and have their data processors or IT departments program, map, load those documents into their loan origination systems, and test them before putting them into production. They also need to revise their loan policies and procedures and train their personnel. Most lenders are at the mercy of their data processors' schedules and workload. It is not unusual for data processors to take at least 6 months to make programming changes for even the most basic of revisions. The extensive changes to multiple loan documents required by the Rule for all of the data processors' clients would be impossible to accomplish in five-and-a-half months.

Third, closed-end fixed mortgages with payments that will not change have not been implicated in the "mortgage crisis" or in any type of consumer confusion or unscrupulous lender activity. These are very straight-forward loans in which the consumer is well aware and understand fully their payment schedule. There is simply no harm to postponing the compliance date for these types of loans.

Fourth, postponing the mandatory compliance date for fixed-rate mortgages in which payments do not change will allow creditors to focus their limited resources on ARMs, which I'm sure the Board would agree is the more pressing need.

Finally, imposing rules with an impossible compliance deadline does not benefit consumers and can cut off credit to them. Even some of the most diligent, conscientious lenders will be unable to comply with these rules in time to meet the compliance deadline. As such, the reality is that the new disclosures will simply not be in place on January 30, 2011. These lenders will have two choices: continue lending with the "old" disclosures in place and take the risk of regulatory fines and class-action lawsuits, or cease making mortgage loans. Neither option benefits consumers; it only increases the lenders' compliance risk in an arbitrary and unnecessary manner. Only plaintiffs' attorneys will benefit.

Based on the above, we ask that the Board postpone the compliance date for fixed-rate mortgages with payments that will not change for an additional six to twelve months. This will give lenders, loan form providers, and data processors more time to concentrate on the more pressing and time-sensitive ARM disclosures. While it will be extremely difficult, if not impossible, to make the ARM changes by January 30, 2011, any relief the Board can give with regard to fixed-rate mortgages will benefit consumers and lenders alike.

THE ORGANIZATION OF THE RULE MAKES IT INCOHERENT

The organization of the Rule makes it extremely difficult to decipher the exact requirements for any given loan type. Because the sections are separated by Interest Rate and Payments (and then with an additional section of "special requirements" for negative amortization loans), it requires a compliance officer to bounce back and forth between numerous sections and subsections. This makes it far more complex than it needs to be, and unnecessarily confusing. It increases creditors' compliance risk and lessens the effectiveness of the disclosures, as creditors will miss some of the requirements. This does not benefit consumers.

We would prefer that the rule be organized by loan type. For example, we would like to see separate sections for the requirements of the following mortgage loan types:

- Fixed-Rate, Fully Amortizing;
- Fixed-Rate, Interest Only, with and/or without Balloon Payment and with or without a Principal & Interest Period;
- Fixed-Rate, Negative Amortization;
- Adjustable Rate, Fully Amortizing;
- Adjustable Rate, Interest Only (with and/or without Balloon Payment and with or without a Principal & Interest Period);
- Adjustable Rate, Negative Amortization.

We believe that this type of organization will address the majority of questions you will receive on this Rule.

At the very least, we ask that you provide Model Forms for each of the above loan types.

Finally, we seek clarification of the Tabular Disclosures required for Adjustable Rate loans. Model Form H-4(F) does not address the Rate Adjustments that the rules appear to require. We ask whether the Model Form should include two additional columns for the first and/or second rate adjustments, as follows:

| INTEREST RATE AND PAYMENT SUMMARY: (Payments will vary based on interest rate changes) | | | | | |
|--|---|--|--|--|--|
| | INTRODUCTORY Rate & Monthly Payment (for first (period)) | [(Date) (1 st Adjustment) | [(Date) (2 nd Adjustment) | [MAXIMUM during FIRST FIVE YEARS (date)] | MAXIMUM EVER (as early as (date)) |
| Interest Rate | ____% | [____%] | ____% | [____%] | ____% |
| Principal + Interest Payment | \$____ | [\$____] | [\$____] | [\$____] | \$____ |
| An escrow account is required, as follows: Estimated Taxes + Insurance (escrow) <ul style="list-style-type: none">• [Includes [Private] Mortgage Insurance] | [\$____] | [\$____] | [\$____] | [\$____] | [\$____] |
| TOTAL ESTIMATED MONTHLY PAYMENT | \$____ | [\$____] | \$____ | [\$____] | \$____ |

We also seek clarification as to what disclosures are required when the rate will vary as the Index varies. In such a case, the creditor will not know the dates of the adjustments; can the 1st and 2nd adjustment columns then be omitted? Also, in such a loan, a creditor will not know the maximum during the first five years (unless it has set a 5-year cap). Again, can the “Maximum during the First 5 Years” column be omitted? If so, this must be made clear in the rules.

We also note that the Model Forms do not include the statement, “An escrow account is required, as follows”, which is mandated under the Rule.

FIXED-RATE, FULLY AMORTIZING JUNIOR LIENS WITHOUT ESCROW SHOULD BE EXEMPT FROM THE RULE

We note that most second mortgages are fixed-rate, fully amortizing loans in which the payments never change. There is also no escrow on such loans. For these loans, changing the rules is nonsensical. Consumers refinancing their homes or taking home equity loans will no longer get a payment schedule under 226.18(g) telling them exactly what the payments are, how many payments there will be, and the date that those payments are due. Instead, they will get this disclosure:

| INTEREST RATE AND PAYMENT SUMMARY | |
|-----------------------------------|------------------------|
| | Rate & Monthly Payment |
| Interest Rate | 6.00% |
| Principal + Interest Payment | \$452.93 |
| TOTAL ESTIMATED MONTHLY PAYMENT | \$452.93 |

This is, quite frankly, absurd. It actually tells the consumer less than the long-established 226.18(g) disclosure tells them, and requires creditors to fully reprogram, map, load, and test loan documents. It will cause a creditor to spend tens of thousands of dollars to actually do a disservice to their borrowers. This can’t possibly be the intent of the Board or Congress. In the case of fixed-rate, fully amortizing loans with no escrow, the Board is “fixing something that ain’t broke”. We ask that fully amortizing, fixed rate junior lien loans be exempt from the requirements of 226.18(s) altogether.

FIXED-RATE MORTGAGES WITH DISCOUNTED INTRODUCTORY RATE

Under the rules, “adjustable rate mortgage” means a mortgage loan whose interest rate can change after consummation for any reason whatsoever. We seek clarification of the treatment under the rules of fixed-rate mortgages with a discounted introductory rate.

For example, suppose a consumer takes a fixed-rate, fully amortizing 15-year closed-end home equity loan. The rate is fixed by the creditor and does not depend on an Index. However, the creditor has a promotion in place whereby, if the consumer applies for the loan in September or October, he will receive a discount of one-half of one percent off of the prevailing rate for the first 6 months of the loan. E.g., the creditor’s current fixed rate is 6.00%; if the consumer applies in September or October, the rate will be 5.50% for the first six months, will increase to 6.00% in the 7th month, and remain at 6.00% for the remainder of the term. The minimum monthly payment will also increase accordingly in the 7th month.

We have the following questions:

1. Do the requirements of 226.18(s)(2)(iii) regarding a “less than fully-indexed” rate apply in such a situation?
2. Do the requirements of 226.18(s)(2)(B)(2) regarding “maximum during the first 5 years” apply in such a situation?

Applying both disclosures to such a loan seems unnecessarily complicated and will confuse consumers.

We also note that the Board’s use of the term, “introductory” is not consistent. This term is used both to describe the first rate in effect until the first rate adjustment, as well as the discounted rate. We would suggest using the term, “discounted rate notice” in the 226.18(s)(2)(iii) disclosure instead.

MODEL FORM H-4(H) & INTEREST-ONLY LOANS

We believe that Model Form H-4(H) is inaccurate. Or, alternatively, the text of the regulation does not make it clear that the information contained in the Model Form is required.

This Model Form is labeled as “Fixed Rate Mortgage with Interest-Only Interest Rate and Payment Summary Model Clause”. However, in the table it lists columns for “Introductory Rate” and “Maximum Ever”. This does not make sense, as the rate for a fixed-rate loan, even one with interest-only payments, will not increase. As such, only one interest rate needs to be disclosed; there is no need for the Introductory Rate and Maximum Ever columns. We see no requirement in the text of the regs that would require these columns. Please clarify.

We also seek clarification as to the format and content of the disclosures for “Fixed Rate Mortgages with Interest Only” loans. Section 226.18(s)(3)(ii) states that it applies to interest-only loans. However, subsection (ii)(B) imposes requirements if the payment will be applied to principal and interest. Please clarify that this is referring to a loan in which the loan payment is interest-only for a period of time, and then adjusts to a principal and interest payment schedule at some point. Assuming this is the case, do the rules require two separate columns, one for the “Interest Only Period”, and one for the “Principal and Interest Period”? e.g.:

| INTEREST RATE AND PAYMENT SUMMARY | | |
|--|--|--|
| | Rate and Monthly Payment | |
| | Interest-Only Period (for 1st year) | Principal and Interest Period (beginning in the 2 nd year) |
| Interest Rate | 6.00% | 6.00% |
| Interest Payment (none of the payment will be applied to principal) | \$300.00 | \$300.00 |
| Principal Payment | \$0.00 | \$50.00 |
| [An escrow account is required, as follows: Estimated Taxes + Insurance (escrow)] | \$95.00 | \$95.00 |
| • [Includes private mortgage insurance] | | |
| TOTAL ESTIMATED MONTHLY PAYMENT | \$395.00 | \$445.00 |

Also, doe the rule require Principle & Interest payment disclosures, even if the lender does not specifically offer such a payment option?

Please clarify the rules pertaining to fixed-rate interest-only loans, and provide a Model Form.

We also ask clarification of Interest-Only ARMs. Should the Model Form look like this:

| INTEREST RATE AND PAYMENT SUMMARY (Payments will vary based on interest rate changes) | | | | |
|--|--|--|---|--|
| | Rate and Monthly Payment | | | |
| | Interest-Only Period (for 1st year) | Principal and Interest Period (beginning in the 2 nd year) | MAXIMUM during FIRST FIVE YEARS (date) | MAXIMUM EVER (as early as (date)) |
| Interest Rate | 6.00% | 6.00% | 7.50 | 18.00 |
| Interest Payment (none of the payment will be applied to principal) | \$300.00 | \$300.00 | \$_____ | \$_____ |
| Principal Payment | \$0.00 | \$50.00 | \$_____ | \$_____ |
| [An escrow account is required, as follows: Estimated Taxes + Insurance (escrow)] • [Includes private mortgage insurance] | \$95.00 | \$95.00 | \$_____ | \$_____ |
| TOTAL ESTIMATED MONTHLY PAYMENT | \$395.00 | \$445.00 | \$_____ | \$_____ |

There seems to be many variables in many loan types that make a tabular disclosure difficult, if not impossible. For example, if the rate and/payment adjusts during the Interest Only period, must that be shown in another column? And if the rate and/or payment adjusts during the P&I Period, must that be shown in another column? If so, the Table soon becomes eight or nine columns, which cannot fit on one page in 10 point font, and would be very confusing to a consumer. Please clarify.

INTERPLAY BETWEEN 226.18(s) AND 226.18(g) for FIXED-RATE LOANS

We understand that for ARMs, the payment schedule under 226.18(g) is lacking. However, for fixed-rate loans, it is not. The payment schedule in 226.18(g) for fixed-rate loans is a most helpful, straight-forward disclosure that is perhaps the most important piece of information from a consumer’s perspective. It also serves to contractually document the obligation from a creditor’s standpoint. It lends no confusion to consumers and clearly spells out the repayment terms for both parties. However, the Board now eliminates this disclosure. While our credit union clients will choose to provide this payment schedule, others will not. We are concerned that consumers and creditors alike will not know the number, amount and due dates of the payments required to repay the loan. The rules as currently written now require that such disclosure, if made voluntarily by a creditor, appear outside of the Fed Box. Some creditors will provide the disclosures, and others will not. This will not help consumers comparison-shop when looking for home loans or when trying to decide between, e.g., a home-secured loan and a loan secured by other consumer goods. We ask that the payment schedule in 226.18(g) be reinstated for fixed-rate loans, and that it may appear in the Fed Box. Alternatively, we ask that the Board clarify that the 226.18(g) payment schedule is information that is “directly related to” the 226.18(s) disclosure for fixed rate loans, so that, if a creditor chooses to make the 226.18(g) disclosure, it may do so inside the Fed Box.

OTHER QUESTIONS & COMMENTS

We have the following additional questions for which we seek clarification:

Inclusion of Escrow Amounts: We find it misleading to project escrow amounts beyond consummation. Taxes and insurance go up and down based on municipalities’ tax rates and insurance carriers’ premiums. To predict what they will be in the future is misleading to consumers and overly burdensome for creditors. Taxes and insurance also do not vary by APR, so trying to disclose projected values in the future is outside the intent of the MDIA and the scope of this Rule.

Negative Amortization Loans: We would like to know if 226.18(s)(4)(iii) creates a new, substantive requirement that creditors provide a “full payment option” for all negative amortization loans, e.g., one in which the loan payment will go toward principal and interest so that the loan is fully repaid in substantially equal payments over the loan term. If this is not the case, we ask the Board to add a statement to that effect in its Commentary. We also seek clarification whether this requirement is mandatory in a case where the creditor has no prohibition on prepaying the loan early. In such a case, is the creditor considered to have a “full payment option” so that the disclosure is required?

MDIA Disclosure Regarding “Payments Will Vary”: We note that the Final Interim Rule does not address the requirement under MDIA section 2502(a)(C)(i) that the payment schedule be labeled as, “Payment Schedule: Payments Will Vary Based on Interest Rate Changes”. We ask that this be added to the Rule and the Model Forms (for applicable loans) so that creditors are not inadvertently exposed to increased compliance risk.

Escrow Statement: We also note that none of the Model Forms include the statement, “An escrow account is required, as follows”, which is required under the Rule. We ask that the Model Forms be revised accordingly.

Preferred Rates When Criteria are No Longer Satisfied: We seek clarification as to the treatment of loans that have a preferred rate based on the borrower’s satisfaction of particular criteria, such as being an employee of the creditor or making electronic recurring payments. Generally, the creditor making such loans reserves the right to increase the APR if the borrower ceases to meet the criteria. In such a case, the creditor will not know when the rate will increase. Does the creditor need to show these as columns, e.g., “Preferred Rate Period (as long as criteria are met)” and “Standard Rate Period (at the time the criteria are no longer met) in lieu of “Introductory Rate Period” and “1st adjustment” . Please clarify.

CONCLUSION

We urge the Board to postpone the mandatory compliance date for fixed-rate, fully-amortizing mortgages. The January 30, 2011 date is not mandated by the MDIA, and fixed-rate mortgage disclosures are not the source of confusion to consumers, nor did they contribute to the mortgage crisis. Creditors need additional time to comply with the extensive changes to these rules. By postponing the compliance date for fixed-rate mortgages, it will help creditors concentrate on the more pressing ARM disclosures.

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We also ask that the Board exempt fixed-rate, fully amortizing junior lien mortgages from the requirements of this Rule.

Finally, we ask that the Board clarify the Rule and Model Forms to address our various questions and concerns contained in this letter.

Sincerely,

/s/

Catherine Klimek
Counsel
Securian Financial Group